NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 709 of 2013

- Roshan Khan S/o Late Hasan Ali Aged About 32 Years, Caste-Muslim, R/o Gaurella Ekta Nagar, Thana- Gaurella, Tah. Pendra Road, Distt. Bilaspur C.G.

---- Appellant Claimant

Versus

1. Navin Kumar Vishwakarma S/o Suresh Kumar Vishwakarma Aged About 21 Years R/o Pendra Bus Stand, Thana & Tah. Pendra, Distt. Bilaspur C.G., Chhattisgarh

2. Suresh Kumar Vishwakarma S/o Ram Pramod Vishwakarma Aged About 55 Years R/o Pendra (Bus Stand), Thana & Tahsil Pendra, Distt. Bilaspur (CG)

3. I.C.I.C.I. Lombard General Insurance Co. Ltd., Main House Jenidha House, Keshav Rao Khadya Marg, Mahalaxmi Mumbai, 400034, Bimakarta Karyalaya- Bilaspur, Distt. Bilaspur (CG) 223-001

---- Respondents

For Appellant	:	Shri Yogendra Chaturvedi, Advocate
For Respondent No.3	:	Shri Amrito Das, Advocate.

Order On Board By Hon'ble Shri Justice Parth Prateem Sahu

02/11/2018

1. The claimant/appellant has preferred this appeal assailing the award dated 4.3.2013 passed by the learned Additional Motor Accident Claims Tribunal, Bilaspur (for short 'the Claims Tribunal') in Claim Case No.81/2011 whereby the Claims Tribunal has partly allowed the claim application of the claimant/appellant herein and awarded a sum of Rs.1,65,500/- in total.

2. Being dissatisfied with the award passed by the Claims Tribunal the appellant has filed this appeal for enhancement of compensation on the grounds mentioned therein.

3. Relevant facts for disposal of this appeal are that on 10.8.2009 when the appellant was returning to his house from Gourella as pedestrian, at about 9 pm one Bolero (jeep) bearing registration number CG13-C-2288, which was being driven by the respondent No.1 in a rash and negligent manner, came from the railway station side and dashed the appellant from back due to which he sustained grievous injuries on his head and other parts of the body. He was immediately taken to the Community Health Centre, Gaurella from where he was referred to Apollo Hospital, Bilaspur where his head was operated by a Neuro Surgeon. The appellant has incurred huge monetary expenses in medical treatment and even after discharge from the hospital, he could not cure fully and became disabled to do his business/work which he was doing prior to the accident. For the reasons stated above, the appellant filed claim application before the competent claims tribunal claiming total compensation of Rs.13,22,700/- under all the heads.

4. Respondent No.1 & 2 have submitted their reply and denied all the claims. They have pleaded that no accident had occurred from their vehicle and further, on the date of accident the vehicle was insured with respondent No.3 Insurance Company.

5. Respondent No.3 Insurance Company submitted separate reply to the claim application and stated that the medical bills submitted along with claim application are forged and fabricated. Amount of compensation assessed and claimed is on higher side. No permanent disability has been sustained by the appellant. There was violation of conditions of insurance policy as on the date of accident, the driver of the offending vehicle was not having valid and effective driving license.

6. Learned Claims Tribunal after considering the pleadings and evidence

(oral and documentary) adduced by the respective parties has held that there is no violation of the conditions of insurance policy and awarded total sum of Rs.1,65,500/- making liable the respondent No.3 Insurance Company to pay the compensation.

7. Learned counsel appearing on behalf of the appellant has submitted that the learned Claims Tribunal committed error in not considering all the medical bills and documents annexed along with the application and arrived at a wrong conclusion by awarding such compensation towards medical expenses. By not awarding amount towards pain & sufferings by overlooking the fact that the appellant had sustained very grievous head injury wherein the head of the appellant was to be operated at Apollo Hospital, Bilaspur, he remained admitted in the Apollo Hospital, Bilaspur for about 21 days as indoor patient. Further, a sum of Rs.9000/- has been awarded towards loss of income during lay-off period.

8. Learned counsel appearing on behalf of respondent No.3- Insurance Company has supported the impugned award and submitted that learned Claims Tribunal after considering all the medical bills and documents available on record has rightly assessed the compensation which do not call for any interference.

9. I have heard learned counsel for the claimant/appellant and perused the record including the impugned award.

10. The findings with respect to fastening liability of payment of compensation on the insurance company and awarding compensation on account of injuries sustained by the appellant were not challenged by the respondent No.3 Insurance Company.

11. Now the only aspect which is to be considered and decided is whether the

learned Claims Tribunal has awarded reasonable amount of compensation on the basis of facts, documents and evidence on record.

12. After perusal of the entire record and all the documents marked as exhibits in evidence by the appellant with respect to his treatment, I do not find any infirmity in the impugned award passed by the Claims Tribunal awarding Rs.1,41,034/- towards medical expenses. The Claims Tribunal had further awarded a sum of Rs.5000/- towards attendant; Rs.5000/- towards special diet and Rs.5,000/- for future pains & sufferings which also do not call for any interference.

13. Learned Claims Tribunal in the facts and circumstances of the case and nature of injury i.e. grievous head injury forcing the appellant to go for an operation of skull, failed to award amount for pain and sufferings due to injuries sustained by him. Looking to the medical documents available with respect to treatment undergone by the appellant at Apollo Hospital, Bilaspur (CG) as indoor patient for 21 days, I deem it proper to award a lump sum amount of Rs.25,000/- towards pain and sufferings instead of Rs.5000/-. Further, looking to the nature of work which the appellant was doing prior to the date of accident i.e. business of kirana shop (grocery shop), I deem it proper to award a sum of Rs.15,000/- towards loss of income during lay-off period, instead of Rs.9,000/- as awarded by the claims tribunal.

14. Thus, now the appellant would be entitled for a total compensation of Rs.1,96,034/- i.e. Rs.1,41,034/- towards medical expenses, Rs.25,000/- for pains & sufferings, Rs.15,000/- for loss of income during lay down period, Rs.5000/- for attendant & Rs.5000/- special diet, rounded off to Rs.1,91,500/-, in place of Rs.1,65,500/- as awarded by the Claims Tribunal. Since the Claims Tribunal has already awarded Rs.1,65,500/-,

after deducting the said amount the claimant/appellant is entitled for enhanced amount of Rs.26,000/- (1,91,500-1,65,500). This amount of compensation shall carry interest @ 9% p.a. from the date of filing of claim application till its realization. Rest of the conditions mentioned in the impugned award shall remain intact.

15. In the result, the appeal is allowed in part and the award impugned stands modified to the extent indicated above.

Sd/-
(Part Prateem Sahu)
Judge

roshan/-